

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LOCAL 40, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO,**

Charged Party/Respondent,
and

NBCUNIVERSAL MEDIA, LLC,

Charging Party,
and

Case 31-CD-149956

UNIVERSAL CITY STUDIOS, LLC,

Employer,
and

**NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES AND TECHNICIANS, LOCAL 53,**

Party-In-Interest/Intervenor.

**SECTION 10(k) POST-HEARING BRIEF TO THE BOARD
ON BEHALF OF UNIVERSAL CITY STUDIOS, LLC**

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TABLE OF CONTENTS

| | |
|--|----|
| TABLE OF AUTHORITIES | ii |
| I. Jurisdiction and Labor Organization Status. | 1 |
| II. The Jurisdictional Dispute..... | 2 |
| A. Background and Facts of the Dispute. | 2 |
| 1. The IBEW-represented Electricians and HVAC Mechanics at the Universal City Studios Lot | 2 |
| 2. NBC at the Burbank Lot..... | 5 |
| 3. The Tom Brokaw News Center at the Universal Studios' Lower Lot | 7 |
| B. The Work in Dispute..... | 9 |
| C. The Contentions of the Parties..... | 9 |
| 1. Employer, Universal Studios, LLC. | 9 |
| 2. Respondent, Local 40, International Brotherhood of Electrical Workers, AFL-CIO | 10 |
| 3. Intervenor, Local 53, National Association of Broadcast Employees & Technicians, AFL-CIO-CLC | 10 |
| D. The Applicability of Section 8(b)(4)(D) of the Act..... | 14 |
| 1. Competing Claims for the Work..... | 14 |
| 2. Use of Proscribed Means..... | 14 |
| 3. No Voluntary Method of Adjustment of Dispute | 15 |
| 4. Conclusion..... | 15 |
| E. The Merits of the Dispute | 16 |
| 1. Board Certifications..... | 16 |
| 2. Collective Bargaining Agreements..... | 16 |
| 3. Employer's Preference, Current Assignment and Past Practice | 18 |
| 4. Area and Industry Practice. | 19 |
| 5. Relative Skills and Training | 19 |
| 6. Economy and Efficiency of Operations | 21 |
| III. Conclusion..... | 22 |

TABLE OF AUTHORITIES

| | Page(s) |
|--|----------------|
| Cases | |
| <i>Automotive Trades District Lodge No. 190 (SeaLand Service, Inc.),</i> 322 NLRB 830 (1997) | 22 |
| <i>Bakery Workers Local 6 (The Bachman Co.),</i> 337 NLRB 407 (2002) | 14 |
| <i>Cleveland Typographical Union, Local 53 (The Sherwin-Williams Co.),</i> 224 NLRB 583 (1976) | 20 |
| <i>Elec. Workers (IBEW), Local 196 (Aldridge Electric, Inc.),</i> 358 NLRB No. 87, slip op. (2012) | 15, 18, 21 |
| <i>Elec. Workers (IBEW), Local 48 (ICTSI Oregon, Inc.),</i> 358 NLRB No. 102, slip op. (2012) | 15 |
| <i>Elec. Workers (IBEW), Local 48 (Kinder Morgan Terminals),</i> 357 NLRB No. 182, slip op. (2011) | 18 |
| <i>Int'l Ass'n of Machinists and Aerospace Workers, Local 724, AFL-CIO,</i> 309 NLRB 377 (1992) | 18 |
| <i>Laborers (Esback Bros., LP),</i> 344 NLRB 201 (2005) | 18 |
| <i>Lancaster Typographical Union No. 70 (C.J.S. Lancaster),</i> 325 NLRB 449 (1998) | 22 |
| <i>Machinists, Local Lodge 724 (Holt Cargo Systems, Inc.),</i> 307 NLRB 1394 (1992) | 15 |
| <i>Operating Engineers Local 318 (Kenneth E. Foeste Masonry, Inc.),</i> 322 NLRB 709 (1996) | 12 |
| <i>Sign Painters Union No. 756 (Heritage Display Group of Dallas, Inc.),</i> 306 NLRB 818 (1992) | 19 |
| <i>Structural Steel and Bridge Painters Locals Union 806 (Carabie Corp.),</i> 356 NLRB No. 123, slip op. (2011) | 17 |
| <i>Teamster Local 179 (USF Holland, Inc.),</i> 334 NLRB 362 (2001) | 13 |

| | |
|---|-----------|
| <i>Teamsters, Local 174 (Airborne Express, Inc.),</i> 340 NLRB 137 (2003)..... | 16-17, 18 |
|---|-----------|

National Labor Relations Act, 29 U.S.C. § 151, *et seq.*

| | |
|----------------------------|---------------|
| 29 U.S.C. § 152..... | 2 |
| 29 U.S.C. § 158(b)(4)..... | <i>passim</i> |
| 29 U.S.C. § 160(k)..... | <i>passim</i> |

INTRODUCTION

The Charge in this proceeding brought pursuant to Section 10(k) of the National Labor Relations Act (the “Act”), 29 U.S.C. § 160(k), was filed on April 13, 2015 by NBCUniversal Media, LLC (“NBC”). The Charge alleges that Charged Party-Respondent Local 40, International Brotherhood of Electrical Workers, AFL-CIO (“IBEW”), violated Section 8(b)(4)(ii)(D) of the Act, 29 U.S.C. § 158(b)(4)(ii)(D), by threatening to picket or engage in other economic action with an object of forcing or requiring the Employer, Universal City Studios, LLC (“Universal Studios”), to assign certain work – the installation, operation, maintenance and repair of the heating, ventilation, and air conditioning system, and the electrical and plumbing systems plant maintenance work at the Tom Brokaw News Center in Universal City, California – to employees represented by IBEW rather than to employees represented by the Party-in-Interest/Intervenor, National Association of Broadcast Employees & Technicians, Local 53 (“NABET”). The parties stipulated to these facts and conclusions at the Section 10(k) hearing. TR. pp. 9-10; Bd Exh. 1, and Bd Exh. 2, paragraphs 6 and 10.¹

The Section 10(k) hearing was held on May 13 and 14, 2015, before Hearing Officer John Rubin, in Los Angeles, California. TR. p. 5.

I.

JURISDICTION AND LABOR ORGANIZATION STATUS

The Employer, Universal Studios, is a Delaware limited liability company with an office and place of business located at 100 Universal City Plaza, Universal City, California, where it is engaged in the business of motion picture and television studio

¹ References to the transcript of the Section 10(k) hearing are cited as “TR.” followed by the page number; Board exhibits are designated as “Bd. Exh.”; the Employer’s exhibits are designated as “Er Exh.”; Intervenor NABET Local 53’s exhibits are “Local 53 Exh.”; and Respondent IBEW Local 40’s exhibits are “Local 40 Exh.”

production. During the past year, which period is representative of its annual operations generally, Universal purchased goods and services valued in excess of \$50,000.00 that were delivered directly in interstate commerce to its Universal City, California facilities from locations outside the state of California. All parties stipulated that Universal Studios is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, 29 U.S.C. §§ 152(2), (6), and (7), and an employer within the meaning of Section 8(b)(4)(D) of the Act. TR. pp. 9-10; Bd Exh. 2, paragraphs 3 and 4.

All parties stipulated that IBEW and NABET are each a labor organization within the meaning of Section 2(5) of the Act. TR. pp. 9-10; Bd Exh. 2, paragraph 5.

II.

THE JURISDICTIONAL DISPUTE

A. Background and Facts of the Dispute

1. The IBEW-represented electricians and HVAC mechanics at the Universal City Studios Lot

Universal Studios engages in the business of motion picture and television production at what is commonly called the Universal Studios' Lower Lot in Universal City, California. The Lower Lot is comprised of production studios and sound stages, office buildings and related facilities. The Universal Studios' Upper Lot, which is not involved in the issues in this case, is adjacent to the Lower Lot, and is occupied by the Universal Studios Hollywood Theme Park and related tourist attractions. Universal Studios is responsible for the maintenance of the many buildings and related facilities on the Lower Lot. TR. pp. 36-39, 127-128. A map of the Lower Lot is Employer's Exhibit 3. TR. pp. 101-104.

IBEW-represented employees have performed the HVAC, electrical and related skilled maintenance work on all buildings on the Lower Lot for many decades. In 2004, the General Electric Co., which was then the parent company of the National Broadcasting Company, acquired Universal Studios. Since that acquisition and to the present day, IBEW-represented employees of Universal Studios have continued to perform the HVAC, electrical and related skilled maintenance work on all buildings on the Lower Lot. TR. pp. 184-185, 278 and 338.

Universal Studios is a member of the Alliance of Motion Picture and Television Producers (“AMPTP”), which is the industry-wide multi-employer association that bargains with the IBEW as the representative of electrical, air conditioning, sound installation and maintenance employees in the motion picture and television production industry in Los Angeles County, California. This includes Universal Studios’ Lower Lot facilities. TR. pp. 36-37, 180-181, 184-185; Joint Exh. 2. The IBEW’s most recent collective bargaining agreement with the AMPTP is currently effective for the term from August 1, 2012 through July 31, 2015. Joint Exh. 2, page 12 (Article 9, Term of Agreement), pages 168-169, (Exhibit A, Companies in the Multi-Employer Unit); hereinafter referred to as the “IBEW-Producer Agreement”.

The IBEW-Producer Agreement applies “to the classifications of employees listed in the ‘**Wage Scales, Hours of Employment and Working Conditions**’ set forth herein, employed by Producer [Universal City Studios LLC] to perform services in the County of Los Angeles [California] ...” Joint Exh. 2, page 1 (emphasis in original). Those classifications are: journeyman and apprentice air conditioning mechanics and journeyman and apprentice electricians, which also include Universal Studios’ multi-

skilled Tower Engineers working at the Lower Lot. TR. pp. 39-41, 131, 181-184; Joint Exh. 2, pages 66-68.

The work in dispute in this case is the HVAC, electrical and plumbing maintenance work now performed by IBEW-represented Tower Engineers² and Electrical Department and HVAC Department workers at the Tom Brokaw News Center (“Brokaw News Center”). Bd Exh. 2, paragraph 6; TR. pp. 40-41. 53-54. The Brokaw News Center occupies two of the several buildings (#1126 and #2120) situated at the front of the Lower Lot facing Lankershim Boulevard.³ The same classification of Universal Studios’ IBEW-represented Tower Engineers maintain all these buildings, which, reading from south to north on the site map (Er Exh. 3), include: the Jules Stein Building, #1360; the John Ford Building, #1320; the Studio Restaurant, #2311; the Lew R. Wasserman Building, #1280 (the “tower building”); buildings 2230 and 2220, which are commonly known as “Stage 1”; the Carl Laemmle Building, #2160; and the Abbott & Costello Building, #2128. Tower Engineers also maintain two additional buildings at the northeast corner of the Lower Lot, the Sidney J. Sheinberg Building, #9128, and the Child Care building, #9227. Er Exh. 3; TR. pp. 106-109.

In addition to the Tower Engineers, Universal Studios employs approximately twenty-five journeymen and apprentice IBEW-represented electricians (the Electrical Department), and approximately nine journeymen and apprentice IBEW- represented

² The job title “Tower Engineers” refers to workers who combine HVAC mechanic, electrician and plumbing skills, and have long been represented by the IBEW at Universal Studios under the IBEW-Producer Agreement. The job title of Tower Engineer derives from the fact that the combined job classification was first utilized when the “black tower,” the Lew R. Wasserman Building, #1280 was constructed many years ago. TR. pp. 110, 185-186. At present, eleven Tower Engineers are assigned to the ten office buildings and the two buildings of Stage 1 that they service on the Lower Lot. Er Exh. 3; TR. pp. 97-98.

³ Er Exh. 3, the map of the Lower Lot, is oriented with north to the top; and Lankershim Boulevard is found in the upper left corner of the Exhibit. The Lower Lot buildings are numbered, and several are named on Er Exh. 3.

HVAC mechanics (the HVAC Department). These workers install, maintain and repair electrical and HVAC systems throughout the Lower Lot and interchange with each other in all the production and sound stages and other facilities at the Lower Lot, including assisting and augmenting the Tower Engineers as needed. TR. pp. 97-99; Er Exh. 2.

2. NBC at the Burbank Lot

NBC has operated television production facilities for many years in Burbank, California, at what is commonly referred to as the Burbank Lot. TR. pp. 65-66. In 2007, NBC sold the real property at the Burbank Lot and leased it back while continuing television production there. TR. pp. 74-75, 80. During the period that NBC owned the Burbank Lot, and for a few years after the sale and lease-back, NABET-represented air conditioning and plant maintenance employees worked on certain of the Burbank Lot's air conditioning systems. TR. pp. 231, 249.

NABET and NBC have been parties to a collective bargaining agreement covering many different classifications at the Burbank Lot (the "Master Agreement"). The most recent Master Agreement expired on March 31, 2015, and was composed of several individual bargaining units set forth in separate agreements within the Master Agreement.⁴ The air conditioning employees at the Burbank Lot were included in the "L" contract bargaining unit of the Master Agreement that applies only in Los Angeles County, California. Joint Exh. 1, sec. 26.3, Duration, at page 59, and sec. L.1.1, Scope of Unit of "L" Contract, at page 144; TR. pp. 231, 249, 332-333.

⁴ The Master Agreement applies to certain NBC facilities in Chicago, Illinois, Los Angeles, California, New York, New York, and Washington, D.C. Joint Exh. 1; TR. p. 242. The "A" contract in the Master Agreement covers television broadcast employees, generically referred to as "engineers," that for the most part work within television studios producing television shows. Joint Exh. 1, pages 60-105. No party contends that the A contract engineers perform any part of the disputed work.

Most significantly, the “L” Contract – like all of the Master Agreement – was limited to facilities of NBC *as that company had existed in 1987*. The Master Agreement describes the employer to which it applies, as follows:

Master Agreement dated as of April 1, 2009 between NBCUniversal Media, LLC, as the owner and operator of those television and radio stations, television and radio network operations and other ***entities and operations that were covered by the 1983-1987 NABET-NBC Master Agreement and news bureaus*** as set forth in Stipulation 19, ***but only to the extent that such stations, network operations, other entities and operations and new bureaus continue to be owned and operated by NBCUniversal Media, LLC (hereinafter called the “Company”)***, and the National Association of Broadcast Employees and Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, AFL-CIO-CLC, or its successor (hereinafter the “Union” or “NABET-CWA”)....

Joint Exh. 1, page 1 (emphasis supplied); Joint Exh. 5(a). The “L” contract of the Master Agreement has never been applied to Universal Studios’ employees at the Universal Lot. TR. pp. 67-68, 70.

The parties stipulated and it is undisputed that the Universal Lot was acquired by NBC’s then parent company, General Electric Co., in 2004, and prior to that the Universal Lot had no relationship to NBC or the Burbank Lot. TR. pp. 337-338. The Lower Lot was not part of the “entities and operations” that were owned and operated by NBC’s predecessor in 1987 and it is excluded from the scope of the Company that is party to NABET’s Master Agreement.

Beginning in about 2010, the new owner of the Burbank Lot began taking over the performance of some of the building maintenance work on the Burbank Lot; and in January 2013, the new owner took back from NBC all the remaining building maintenance operations at the Burbank Lot. TR. pp. 50, 75, 80-81, 260. As a result of this change, all of NBC’s remaining “L” contract employees were laid off on December

28, 2012, pursuant to an agreement between NABET and NBC that had been entered into on December 26, 2012. TR. pp. 70, 81, 277-278, 300-302.

3. The Tom Brokaw News Center at Universal Studios' Lower Lot

Beginning in about 2012, two buildings that had formerly been occupied by the Technicolor Company on the Lower Lot were substantially renovated to house the broadcast television facilities that were scheduled to move from the Burbank Lot in 2014. These buildings were first known as the Universal City Broadcast Center and were subsequently re-named the Tom Brokaw News Center.⁵ TR. pp. 42-44, 186-188.

In the summer of 2013, Universal Studios' facilities management began planning for the performance of electrical, HVAC and plumbing systems maintenance work that would be needed when the renovation of the former Technicolor Company buildings was completed. In July 2013, Universal Studios' Chief Engineer, Kevin Watson, an IBEW-represented employee who supervises the Tower Engineers at the Brokaw News Center, began surveying the HVAC, electrical and plumbing systems that would be maintained by his employees when the renovation was completed. TR. p. 154.

In 2013, Mark Higginbotham, Universal Studios' Director of Labor Relations, was aware from previous discussions with its representatives that NABET was asserting that the building maintenance work at the Universal City Broadcast Center should be assigned to NABET members, because other NABET-represented employees working under the terms of a different portion of the Master Agreement (specifically, the A Contract) would perform the television broadcast operations within the building. By the

⁵ They are the buildings numbered 1126 and 2120 in the upper left (northwest) corner of the Lower Lot map that is Employer's Exhibit 3 (and are labelled there: "Brokaw News Center"). TR. pp. 103-104.

time of these conversations in 2013, the NABET-represented maintenance employees at the Burbank Lot had all been laid off. TR. pp. 44-45, 64, 70, 81.

In a telephone conversation in early August 2013, Higginbotham informed NABET's Local President, Steve Ross, that Universal Studios' IBEW-represented employees were going to perform the maintenance of the air conditioning at the former Technical Buildings, because they were among the facilities on the Lower Lot for which Universal Studios has maintenance responsibility. Ross replied to Higginbotham that the work should be assigned to NABET under the "L" contract. TR. pp. 44-45.

Shortly thereafter, Higginbotham received from Ross a written grievance, dated August 13, 2013, which states, in relevant part:

On or about August 13, 2013, the Union was notified that the Company [NBCUniversal] had recognized another Union and assigned its members to perform work within the exclusive jurisdiction of this Local Union. Specifically, the Union was told work covered by the "L" contract of the current NABET-CWA/NBCU Master Agreement was being assigned to members of the IBEW, including, but not limited to, air conditioning and plant maintenance work at the newly constructed UCBC Building located on the Universal lot within Los Angeles. The UCBC Building is to be the new home of NBC, KNBC, and Telemundo operations. As such, the UCBC Building will be a facility "of the Company in Los Angeles" under the terms of the NABET-CWA/NBCU Master Agreement and **the assignment of "L" contract personnel is required.**

... The Union demands that the Company cease and desist from any further violations.

TR. p. 48; Joint Exh. 3(b) (emphasis supplied). At around the same time, by a letter sent to Higginbotham on August 30, 2013, IBEW claimed jurisdiction over the work in question. Er Exh. 1. A year later, in October 2014, NABET demanded arbitration of that grievance. TR. p. 48; Joint Exh. 3(a).

After being informed that NABET was demanding arbitration on its work assignment grievance, the IBEW's Business Manager/Financial Secretary Bill

Brinkmeyer wrote to Higginbotham. That March 26, 2015 letter states, in relevant part, as follows:

IBEW Local 40 understands that the NABET Local 53 is actively pursuing a grievance against NBC Universal concerning the assignment of certain work at NBC Universal's Universal Studios lot related to skilled maintenance of heating, ventilation and air-conditioning systems....

Second, as you likely know, under IBEW's current collective bargaining agreement, IBEW is the bargaining representative of electricians and related skilled maintenance employees on the Universal Studios lot. IBEW considers NABET's continued pursuit of its grievance to be a claim for work which is covered under our agreement and within the jurisdiction of IBEW. As a result, if NABET or any other labor union continues to claim or is assigned work covered under our agreement, IBEW will take action, including economic action, such as picketing, to compel NBC Universal to reassign the work back to workers represented by IBEW.

TR. p. 58; Joint Exh. 4.

B. The Work in Dispute

The parties stipulated that the disputed work involves the installation, operation, maintenance and repair of the heating, ventilation, and air conditioning system, and the electrical and plumbing systems plant maintenance at the Tom Brokaw News Center in Universal City, California.⁶ TR. pp. 9-10; Bd Exh. 2, paragraph 6.

C. The Contentions of the Parties

1. Employer Universal City Studios

The requirements of Section 8(b)(4)(D) of the Act have been met: it is stipulated that both NABET and the IBEW have demanded assignment of the disputed work, Board Exhibit 2 at paragraph 8; and in Joint Exhibit 4, the IBEW threatened to picket if

⁶ All parties further stipulated that the work in dispute does not extend to the work of the IBEW-represented position of electrical estimator; that position is currently occupied by Kevin Laureys. TR. p. 103; Er Exh. 2.

the assigned work were to be taken from it. It is also stipulated that there is no agreed upon method for voluntary adjustment of the dispute. Board Exh. 2, para. 9.

This leaves the Section 10(k) issue of whether the Board should award the work to NBC's NABET-represented employees or to Universal Studios' IBEW-represented employees. All applicable factors favor an award of the disputed work to the IBEW-represented workers employed by Universal Studios.⁷ Universal Studios prefers the assignment it had made to its IBEW-represented employers, and the additional factors of collective-bargaining agreements, area and industry practice, relative skills and training, and economy and efficiency of operation, all favor award of the work to the Employer's IBEW-represented employees. TR. pp. 14-16 and 338-342.

2. Respondent IBEW

The IBEW concurs with the Employer's preference for continued assignment of the work to the IBEW-represented employees of Universal Studios who are performing the work. TR. pp. 16, 342-343.

3. Intervenor NABET

NABET first contends that the traditional Section 10(k) work assignment factors are in equipoise and are not determinative of the dispute in this case: "... Local 53 submits that the evidence adduced in this hearing at best, is a wash with respect to the assignment of work." TR. p. 344, lines 11-13. Strikingly, NABET concedes that, at most, it has no better claim to assignment of the disputed work than does the IBEW, amounting to a concession that the work has been properly assigned to IBEW.

Next, NABET asserts that:

⁷ The factor of Board certifications is inapplicable because no party contends that there has been a relevant determination or certification by the Board. Board Exh 2, paragraph 7.

... As Local 53 stated in its opening statement, we believe that the real determining factor in this matter should focus on express, clear, plain contractual language that was entered into between NBCUniversal and Local 53, and as exemplified in Joint Exhibit 1 and in Joint Exhibit 5.

TR. p. 344, lines 13-17.

Finally, NABET contended in its opening statement that its Master Agreement had been breached when NBC transferred certain television broadcast operations from the Burbank Lot to the Universal Studios' Lower Lot without employing NABET-represented employees to perform the now disputed maintenance work:

Primarily, the agreement between NABET and NBC [Joint Exhibit 1] contained a provision known as the L contract. And the L contract is a provision within the Master Agreement that specifically relates to and covers maintenance and heating ventilation and air conditioning systems and specifically assigns a class of employees, represented NABET employees, to do that work. So as you will see, Mr. Hearing Officer, at...it's Article 1.11, the L agreement states that the term employee used in this agreement applies to the air conditioning employees employed by the Employer [NBCUniversal Media, LLC] in Los Angeles County, California excluding department supervisors.

So from NABET's point of view, the import of the language is a very clear contractual promise by [NBCUniversal Media, LLC], that whenever it shall employ or utilize plant maintenance employees, the CBA, Joint Exhibit 1, would apply. And hence, NABET representation would follow ...

TR. p. 18, lines 22-25; p. 19, lines 1-12,

... [T]he parties expressly entered into a further contractual stipulation known as a side letter 61, which is in Joint Exhibit 1. Side Letter 61 states, "This will confirm that the [C]ompany will not assert based solely on a change of location from the [C]ompany's Burbank facility to another location within the Los Angeles metropolitan area of an entity and/or operation covered under the preamble to this [M]aster [A]greement that such entity or operations is no longer covered [under] such [P]reamble."

TR. p. 20, lines 13-21.

... [A]nd we believe this is a very important point Mr. Hearing Officer, through the move of its operations to Universal and what NABET views as a blatant breach of the side letter 61 as well as the promises set forth in Sections 1 and 12 of the [Master Agreement] ... NBC Universal breached its

promise not to utilize the mere fact of the move in location as a basis for removing NABET jurisdiction. But that's exactly what happened.

TR. p. 21, lines 13-20. In sum, NABET contends: (i) that NBC breached the Master Agreement by not assigning the disputed work to NABET, and (ii) that the breach compels the conclusion that the disputed work must be awarded by the Board to NABET.

NABET errs in both regards. First, the disputed work at the Lower Lot was awarded by Universal Studios and not NBC. Universal Studios is not a party to the Master Agreement, and Universal Studios could not and NBC did not breach the Master Agreement regarding Universal Studios' assignment of work to its IBEW-represented employees.⁸ Further, the fact that the Employer is Universal Studios, and not NBC, renders Sideletter 61 to the NABET Master Agreement wholly irrelevant. That Sideletter expressly provides that the Company (i.e., NBC) will not assert a lack of jurisdiction "based solely on a change of location." Here, the basis for the Employer's decision to assign the maintenance work to its IBEW-represented employees is its direct contractual obligation to IBEW.

In any event, an alleged breach of a collective bargaining agreement simply is not a determining factor with respect to the Board's assignment of work in a Section 10(k) proceeding. This assignment to IBEW-represented employees is consistent with practice that has evolved with regard to other NBC television operations that have relocated to the Lower Lot. For example, in *Operating Engineers Local 318 (Kenneth E.*

⁸ In response to questions from the Hearing Officer, it was explained by the Employer's Director of Labor Relations that the Charging Party, NBCUniversal Media, LLC, and the Employer, Universal City Studios, LLC are separate entities and the Charging Party-NBC is a signatory only to the Master Agreement, and the Employer-Universal Studios is a signatory only to the IBEW-Producer Agreement, and neither is signatory to the other's agreement. TR. pp. 78-79. This was not disputed by any party with any contrary, probative evidence.

Foeste Masonry, Inc.), 322 NLRB 709 (1996), the Operating Engineers not only asserted that the employer had violated its collective bargaining agreement by assigning the disputed work to Laborers-represented employees, but the Operating Engineers had obtained an arbitration award in a bilateral proceeding sustaining its claim of a breach of contract and purporting to award the disputed work to the Operating Engineers. 322 NLRB at 710. The Board disregarded that arbitrator's decision and held that:

... [The] award is entitled to little, if any, weight because [the arbitrator] *did not consider many of the factors taken into account by the Board* in such cases... As we are unable to understand the basis for the arbitrator's decision or to *evaluate his award according to our own standards*, we find that it does not favor either group of employees.

Id. at 714 (citing *Boilermakers Local 72 (ABC)*, 247 NLRB 73, 75 (1980); *Teamster Local 179 (USF Holland, Inc.)*, 334 NLRB 362, 365 (2001) (arbitration award to which all unions were not a party is entitled to little or no weight in determining the work assignment dispute and does not favor awarding the work in dispute to either union); and *Bakery Workers Local 6 (The Bachman Co.)*, 337 NLRB 407, 411 (2002) (arbitrator's award where all contending unions were not joined, and in which there was no evidence that the factors that Board the relies on when it resolves jurisdictional disputes were considered, is disregarded and does not favor employees represented by either union)). Rather, the terms of the contending unions' collective bargaining agreements are but one of the several factors considered by the Board in determining the award of disputed work. An alleged breach of a collective bargaining agreement is entitled to no weight in determining the award of disputed work.

Even were it relevant to determine whether a breach of the NABET agreement occurred, no such violation occurred in this case, as evidenced by the practice of the parties. Prior to 2014, the Lower Lot housed several NBC television productions on

which NABET-represented television broadcast technicians worked. In each such case, the HVAC and electrical maintenance was provided to those buildings by Universal Studios' IBEW-represented Tower Engineers and Electric Department and HVAC Department employees without objection or grievance from NABET. The *Tonight Show* relocated from the Burbank Lot and began broadcasting from Stage 1 in 2009; and the NBC Agency, which produces television promotional spots, relocated from the Burbank Lot and has produced television spots at the Lower Lot for 2-3 years. Other similar television productions staffed by NABET-represented broadcast technicians at IBEW-maintained facilities on the Lower Lot have included *Food Fighters* and *Hollywood Game Night*. None of these cases constituted a breach of NBC's Master Agreement, a fact NABET effectively conceded by foregoing any grievance regarding the building maintenance work at those facilities prior to that relating to the Brokaw News Center in 2013 (Joint Exh. 3(b)). TR. pp. 83-90.

D. The Applicability of Section 8(b)(4)(D) of the Act

1. Competing Claims for the Work

All parties stipulated that both labor unions are demanding the disputed work. TR. pp. 9-10; Board Exh. 2, paragraph 8: "IBEW Local 40 and NABET Local 53 both claim the work that is in dispute."

2. Use of Proscribed Means

It is uncontroverted that, upon learning that NABET was persisting in its demand to have the disputed work assigned to employees it represented, the IBEW's Business Manager/Financial Secretary, the "chief executive officer" of that union, threatened that IBEW would picket and engage in other "economic action" in furtherance of the IBEW's demand that it retain the assignment of the disputed work: "As a result, if NABET . . . is

assigned work covered under our agreement, **IBEW will take action**, including economic action, **such as picketing**, to compel NBC Universal **to reassign the work back to workers represented by IBEW.**” TR. p. 58, 178-179; Joint Exh. 4 (emphasis supplied).

Plainly, there is more than reasonable cause to believe that the IBEW is employing a threat to picket, which is a means proscribed under Section 8(b)(4)(D) of the Act, to further its demand to retain the HVAC, electrical and plumbing work assignment at the Brokaw News Center. *Aldridge Electric, supra*, 358 NLRB No. 87, slip op. at 3 (“... [IBEW] Local 196’s June 22 letter to the Employer, threatening it with picketing ‘if work is improperly taken away from IBEW Local 196 based on the actions of other unions,’ constituted a threat to take proscribed coercive action in furtherance of a claim to the disputed work....”).⁹

3. No Voluntary Method of Adjustment of Dispute

All parties stipulated at the hearing that there is no method for voluntary adjustment of the dispute to which all parties are bound. TR. pp. 9-10; Bd Exh. 2, paragraph 9.

4. Conclusion

Section 8(b)(4)(ii)(D) of the Act was violated by the IBEW’s clear and unequivocal, March 26, 2015 threat that it “will take action, including economic action,

⁹ *Electrical Workers (IBEW), Local 48 (ICTSI Oregon, Inc.)*, 358 NLRB No. 102, slip op. at 2 and 3 (2012) (“... When IBEW learned of these grievances, it threatened to picket ICTSI if the disputed work was taken from IBEW-represented employees and given to ILWU-represented employees.” “Threatening to picket is a proscribed means of enforcing a claim to disputed work....”); *Electrical Workers (IBEW), Local 196 (Aldridge Electric, Inc.)*, 358 NLRB No. 87, slip op. at 3 (2012) (same); and *Machinists, Local Lodge 724 (Holt Cargo Systems, Inc.)*, 307 NLRB 1394, 1396 and n.10 (1992) (Longshoremen’s contractual grievance seeking assignment of stevedoring work from steamship companies was a claim for work under section 8(b)(4)(D) even without directly demanding the work from the stevedoring company that had assigned the disputed work to the Machinists).

such as *picketing, to compel NBC Universal to reassign the work* back to workers represented by IBEW,” in the event that “NABET ... is assigned work [including skilled maintenance of heating, ventilation, and air-conditioning systems] covered under our agreement” with Universal Studios. Joint Exh. 4; emphasis supplied.

E. The Merits of the Dispute

1. Board Certifications

The parties stipulated that Universal Studios is not failing to conform to an order or certification of the Board determining the bargaining representative for the employees performing the disputed work. TR. pp. 9-10; Joint Exh. 2, paragraph 7. Further, no party contends that there is a relevant Board certification or determination that relates to the assignment of the disputed work.

2. Collective Bargaining Agreements

NABET’s Master Agreement and the “L” contract included in it expired on March 31, 2015. Joint Exh. 1, page 59 (sec. 26.3, duration), and page 144 (sec. L.1.1, Scope of Unit of “L” Contract).

NABET’s Master Agreement is, by its terms, restricted to operations of NBC that were in existence and owned by its predecessor, National Broadcasting Company, Inc., in 1987. Joint Exh. 1, page 1; and Joint Exh. 5(a); TR. pp. 314-315. The parties stipulated and it is undisputed that the Universal Lot was acquired by NBC’s then parent, General Electric Co. in 2004, and prior to that it had no relationship to NBC or the Burbank Lot. TR. pp. 337-338. Universal Studios was not any part of NBC in 1987, and is not a party to the Master Agreement.

Even assuming, as NABET argued in this opening statement, that NBC and Universal Studios are a single or joint employer, which they are not, such a fact has no

effect on a determination of a jurisdictional dispute between employees in different bargaining units that are represented by different unions. *Teamsters, Local 174 (Airborne Express, Inc.)*, 340 NLRB 137, n.1 (2003) (respondent union’s argument that two employers related to a disputed work assignment are a single-integrated operation need not be addressed because that issue “does not affect the outcome of this [section 10(k)] case”). Additionally, NABET has failed to offer evidence that even arguably sustains its apparent contention that NBC and Universal Studios are a joint or single employer of the IBEW-represented employees of Universal Studios at the Universal Lot or the laid off, NABET-represented employees at the Burbank Lot. Finally, at the conclusion of the hearing, counsel for NABET summarized its contentions in this case, and no mention was made of NABET’s earlier assertion that NBC and Universal Studios constitute a joint or single employer of any employees involved in this matter. TR. pp. 344-346. In sum, NABET has abandoned its baseless claim that NBC and Universal Studios constitute either a single or joint employer of any employees that are related to the present case.

The work in dispute is being performed at the Brokaw News Center on the Lower Lot principally by the Tower Engineers, and the Electric Department and HVAC Department employees, employed by Universal Studios under the terms of the IBEW-Producer Agreement. TR. pp.93-99, 106-109, 115; Board Exh. 2, paragraph 6. Accordingly, the factor of collective bargaining agreements favors an award of the disputed work to the IBEW-represented employees of Universal Studios, and not to NABET-represented, “L” contract employees, who never have been employees of Universal Studios. *Structural Steel and Bridge Painters Locals Union 806 (Carabie Corp.)*, 356 NLRB No. 123, slip op. at 2-3 (2011) (in jurisdictional disputes, collective-

bargaining factor weighs in favor of awarding disputed work to the union with an agreement with the employer that has ultimate control over assignment of the work; and cases there cited); and *Laborers (Esback Bros., LP)*, 344 NLRB 201, 203 (2005) (union having current collective bargaining agreement favored over union no longer having agreement with employer assigning the work).

3. Employer's Preference, Current Assignment and Past Practice

IBEW-represented employees working at the Lower Lot have performed the HVAC, electrical and related skilled building maintenance work there for many decades, including long before the General Electric Co. acquired the property in 2004. TR. pp. 40-41, 184-185. Universal Studios prefers to continue with its past practice of assigning the HVAC, electrical and plumbing work at the Tom Brokaw News Center to its Local-40 represented Tower Engineers, as it does for the other building maintenance work throughout the Lower Lot. TR. pp. 53-57, 115-122.

The factors of employer's preference, current assignment, and past practice all favor an award of the disputed work to the IBEW-represented employees of Universal Studios and not to NABET-represented, "L" contract employees. *Teamsters, Local 174 (Airborne Express, Inc.)*, 340 NLRB 137, 140-141 (2003) (preference of employer controlling work, rather than of general contractor, is controlling); *Electrical Workers (IBEW), Local 48 (Kinder Morgan Terminals)*, 357 NLRB No. 182, slip op. at 4 (2011) (same); and *Aldridge Electric*, 358 NLRB No. 87, slip op. at 4 (2012) (same); see also *Int'l Ass'n of Machinists and Aerospace Workers, Local 724, AFL-CIO*, 309 NLRB 377, 380 & n.6 (1992) (Board generally gives considerable weight to employer that controls assignment and performance of work).

4. Area and Industry Practice

The IBEW-Producer Agreement is the industry standard for the assignment of HVAC and electrical maintenance work in Los Angeles County where the Lower Lot is located. The AMPTP negotiates the agreement on an industry-wide basis, and all major television and motion picture studios, including CBS Studios, Inc., Paramount Pictures Corp., Sony Pictures Studios, Inc., Sunset Bronson Services, Inc., Walt Disney Pictures, and Warner Bros. Studio Facilities, are signatory. Each of those companies employs IBEW-represented electricians and HVAC mechanics to perform its facilities maintenance under the agreement. TR. p. 208; Joint Exh. 2 pp. 168-169. On the other hand, NABET has only one collective bargaining agreement other than the Master Agreement covering HVAC and plant maintenance employees in Los Angeles, California, which is its agreement with Fox Television Stations, Inc. TR. pp. 220-225; Local 53 Exh. 1.

Clearly the multiple employers assigning HVAC and electrical maintenance work to IBEW-represented employees predominate over the single remaining assignment to NABET-represented employees. The factor of area and industry practice overwhelmingly favors the award of the disputed work to Universal Studios' IBEW-represented employees, and not to the NABET-represented, "L" contract employees. *Sign Painters Union No. 756 (Heritage Display Group of Dallas, Inc.)*, 306 NLRB 818, 820-821 (1992) (union's predominant position among area contractors favors awards of work to employees represented by that union).

5. Relative Skills and Training

Universal Studios' IBEW-represented employees are specifically trained and experienced with the heating, ventilation and air conditioning system, the electrical

system and the plumbing system at the Lower Lot, particularly including the new systems at the Brokaw News Center. TR. pp. 56, 114-115, 171-175, 204. The IBEW's apprenticeship programs provide apprentices, and the IBEW hiring hall provides journeyman HVAC mechanics and electricians to Universal Studios. TR. pp. 56, 59, 98-99. In fact, three IBEW apprentice electricians and one apprentice HVAC mechanic work at Universal Studios at present. TR. pp. 98-99.

The NABET-represented employees of NBC have no experience or training specific to the Lower Lot equipment and systems. More particularly, NABET has no apprenticeship program or other training program that can provide journeyman HVAC mechanics or electricians to Universal Studios. Nor does NABET have a hiring hall to refer qualified employees to any employer. TR. pp. 307-308, 335. In practice, the NABET-represented L Contract employees of NBC worked on an "antiquated" Honeywell-controlled system at the Burbank Lot, with no evidence introduced to support the idea that they had the skill and ability to operate the advanced, digitally controlled Siemens system at the Brokaw News Center. TR. pp. 167-173. This fact also belies NABET's flimsy position that its members possessed at least equivalent skills as the IBEW-represented engineers and its suggested the Employer could not argue to the contrary because it did not inquire about relative abilities at the time of making the assignment to IBEW. At hearing, the only evidence NABET introduced on the relative skills of its members came from the observations of the NABET local's president, Steve Ross, who has no HVAC engineering and maintenance knowledge or experience.

The factor of relative skills and training favors an award of the disputed work to the IBEW-represented employees of Universal Studios and not to NABET-represented, "L" contract employees. *Cleveland Typographical Union, Local 53 (The Sherwin-*

Williams Co.), 224 NLRB 583, 585 (1976) (availability of local union's International's training center, which has been utilized by employer for training of unit employees, favors award of disputed work to those employees and not to employees represented by a union having no comparable capacity).

6. Economy and Efficiency of Operations

IBEW-represented employees of Universal Studios install, maintain and repair electrical and HVAC systems throughout the Lower Lot, and are immediately available to interchange with each other in all the structures and facilities there and do so on a regular basis. TR. pp. 56, 115-117, 126-128, 164-165. More specifically, the Tower Engineers among the IBEW-represented employees work at and interchange among twelve buildings at the Lower Lot, including the Brokaw News Center. Currently, an engineer covers weekend shifts at the Brokaw News Center while assigned for the balance of his work week at the Black Tower on the Lower Lot. Additionally, the crew regularly assigned to the Brokaw News Center respond to after-hours emergency calls and support special projects throughout the Lower Lot. TR. pp. 141-147, 158-163, 173. If the HVAC, electrical and plumbing work at the Brokaw News Center were carved out and assigned to NABET-represented employees, it would eliminate interchange of those employees with the Tower Engineers employed by Universal Studios elsewhere on the Lower Lot. TR. pp. 120-121, 209. Such a change would result in loss of economy and efficiency in the cross-utilization of those skilled maintenance workers. TR. pp. 121-122.

The factor of economy and efficiency of operations favors an award of the disputed work to the IBEW-represented employees of Universal Studios and not to NABET-represented, "L" contract employees. *Aldridge Electric*, supra, 358 NLRB No. 87, slip op. at 5 (economy and efficiency of operations favors award to the Electricians

who can perform work throughout the project and not the Operating Engineers who are restricted only to operate heavy equipment).¹⁰

CONCLUSION

For all of the reasons discussed above, each relevant factor considered by the Board in awarding work subject to a jurisdictional dispute¹¹ compels the conclusion that Universal Studios' IBEW-represented employees are entitled to perform the work disputed here: the installation, operation, repair and maintenance of the heating, ventilation, and air conditioning system, and the electrical and plumbing plant maintenance work at the Brokaw News Center in Universal City, California. No other party, in particular NABET, has submitted any evidence to contradict this conclusion.

Dated: May 29, 2015, at New York, New York.

Respectfully submitted,

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¹⁰ Contrary to NABET's contention at the hearing (TR. p. 236): "The Board does not consider wage differentials as a basis for awarding disputed work." *Lancaster Typographical Union No. 70 (C.J.S. Lancaster)*, 325 NLRB 449, 452 (1998); and *Automotive Trades District Lodge No. 190 (SeaLand Service, Inc.)*, 322 NLRB 830, 835 (1997)(same).

¹¹ The factor of Board certifications does not apply here and therefore favors neither group; all five other factors favor the award of the work to the IBEW-represented employees.

CERTIFICATION OF SERVICE BY ELECTRONIC MAIL

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury, that on May 29, 2015, he caused a true and correct copy of the foregoing SECTION 10(k) POST-HEARING BRIEF TO THE BOARD ON BEHALF OF UNIVERSAL CITY STUDIOS, LLC to be served on counsel for the Respondent/Charged Party and counsel for the Party-In-Interest/Intervenor, by e-mail to the following addresses designated by each attorney for this purpose, respectively:

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Dated: May 29, 2015, at New York, New York.

/s/ Daniel S. Kirschbaum